

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
NORTHEASTERN DIVISION

James Kenyi, )  
)  
Petitioner, )  
)  
vs. )  
)  
Eric H. Holder, Jr., Attorney General; Janet )  
Napolitano, Secretary of the Department of )  
Homeland Security; Scott Banieceke, U.S. )  
ICE Field Office Director; and Warden of )  
Immigration Detention Facility, )  
)  
Respondents. )

Case No. 2:10-cv-108

**REPORT AND RECOMMENDATION  
AND ORDER**

Petitioner James Kenyi (“Kenyi”) filed a petition for a writ of habeas corpus (Doc. #4) pursuant to 28 U.S.C. § 2241 asserting claims arising out of his detention by Immigration and Customs Enforcement pending removal to Sudan. He also filed a motion to appoint counsel. (Doc. #5). After reviewing the petition pursuant to 28 U.S.C. § 1915A(a), the court ordered service upon the respondents. (Doc. # 6). The respondents filed a motion to dismiss (Doc. #8) stating Kenyi was released from custody on January 31, 2011. Kenyi’s release documents accompanied their motion. (Docs. # 8-1, 8-2). Because Kenyi is no longer detained, his petition seeking release is moot. Accordingly, it is **RECOMMENDED** that:

1. The respondents’ motion to dismiss (Doc. #8) be **GRANTED**;
2. Kenyi’s petition for habeas relief (Doc. #4) be **DENIED AS MOOT**;
3. The court certify that an appeal from the dismissal of this action may not be taken *in forma pauperis* because such an appeal would be frivolous and cannot be taken in good faith; and
4. A certificate of appealability not be issued with respect to any of the issues raised by Kenyi in this action.

It is further **ORDERED** that Kenyi's motion to appoint counsel (Doc. #5) is **DENIED**.

Dated this 4th of February, 2011.

/s/ Karen K. Klein  
Karen K. Klein  
United States Magistrate Judge

### **NOTICE OF RIGHT TO OBJECT**

Pursuant to Rule 72(a) and (b), Federal Rules of Civil Procedure, and District of North Dakota Local Court Civil Rule 72.1(D)(2) and (3), any party may object to this Report and Recommendation and Order by filing with the Clerk of Court no later than February 21, 2011, a pleading specifically identifying those portions of the Report and Recommendation and Order to which objection is made and the basis of any objection. Failure to object or to comply with this procedure may forfeit the right to seek review in the Court of Appeals.